



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2017-0698; FRL-9972-54-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d)/129 plan (the “plan”) submitted by the Division of Air Quality of the North Dakota Department of Health (the “Department”) on June 12, 2014. The plan would allow for the implementation of emissions guidelines for existing commercial and industrial solid waste incineration (CISWI) units within the jurisdiction of the State of North Dakota. The plan creates new enforceable emissions limits and operating procedures for existing CISWI units within the State of North Dakota in accordance with the requirements established by the revised CISWI new source performance standards (NSPS) and emission guidelines (EG), promulgated by the EPA on March 21, 2011, with subsequent final amendments to the rule promulgated on February 7, 2013. This proposed plan approval rulemaking is being taken in accordance with the requirements of sections 111(d) and 129 of the CAA and the relevant parts and subparts of the Code of Federal Regulations (CFR).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2017-0698 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6396, lohrke.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD

FROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background Information

Sections 111 and 129 of the CAA outline the EPA's statutory authority for regulating new and existing solid waste incineration units. Section 111(b) directs the EPA Administrator to publish and periodically revise a list of source categories which significantly cause or contribute to air pollution. This subsection also directs the Administrator to establish federal standards of performance for new sources within these categories. Section 111(d) grants the EPA statutory authority to require states to submit to the agency implementation plans for establishing performance standards applicable to existing sources belonging to those categories established in section 111(b). Section 129 specifically addresses solid waste combustion and requires that the EPA regulate new and existing waste incineration units pursuant to section 111 of the Act, including the requirement that a state in which existing designated facilities operate submit for approval a state plan for each category of regulated waste incineration units. Section 129(b)(3) requires the EPA to promulgate a federal plan for existing waste incineration units of any designated category located in any state which has not submitted an approvable 111(d)/129 state plan for said category of waste incineration unit. Such federal plans remain in effect until the state in question submits a new or revised state plan and subsequently receives approval and promulgation of the plan under 40 CFR part 62.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant new or revised EG. Section 129(a)(1)(D) of the Act requires the EPA to develop and periodically revise operating standards for new and existing CISWI units. The NSPS and EG for CISWI units were promulgated on December 1, 2000, at 40 CFR part 60, subparts CCCC and DDDD, respectively. Revisions to the CISWI NSPS and EG were subsequently promulgated by

the EPA on March 21, 2011 (76 FR 15704), with final actions on reconsideration of the rule published on February 7, 2013 (78 FR 9112), and June 23, 2016 (81 FR 40956). State plan requirements specific to CISWI units, along with a model rule to ease adoption of the EG, are found in subpart DDDD, while more general state plan requirements are found in 40 CFR part 60, subpart B, and part 62, subpart A. The guidelines found in subpart DDDD require that states impose emission limits on designated facilities for those pollutants regulated under section 129, including: dioxins/furans, carbon monoxide, metals (cadmium, lead and mercury), hydrogen chloride, sulfur dioxide, oxides of nitrogen, opacity and particulate matter. The EG also requires state plans include essential elements pursuant to section 129 requirements, including: monitoring, operator training and facility permitting requirements.

The current North Dakota state plan was submitted in May 2003 and approved and promulgated on September 17, 2003 (68 FR 54374), under 40 CFR part 62, subpart JJ in response to the original CISWI rule as it was promulgated on December 1, 2000 (65 FR 75338). Due to the most recent revisions to the CISWI rule, the State of North Dakota is required to revise and resubmit its state plan for the EPA approval with respect to the updated EG requirements. On June 12, 2014, the Department submitted to the EPA revisions to the current North Dakota state plan for existing CISWI units within the state's jurisdiction.

III. Summary of North Dakota's Section 111(d)/129 Plan for Existing CISWI Units

The EPA has completed a review of the revised North Dakota section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B and DDDD, and part 62, subpart A. The EPA has determined that the plan submittal meets the requirements found in the above-cited subparts. Accordingly, the EPA proposes to approve the submitted state plan. The EPA's proposed approval action is limited to the revised CISWI state plan submittal and the

subpart DDDD “Model Rule” addressing CISWI units as it is incorporated by the State of North Dakota in the North Dakota Administrative Code (NDAC) Chapter 33-15-12-02, subpart DDDD. A detailed summary of the submittal’s compliance with the requirements found in the CFR is available in the technical support document (TSD) associated with this rulemaking action. The TSD, as well as the complete North Dakota submittal package, will be available in the docket for this rulemaking action and may be found at the www.regulations.gov website.

IV. Proposed Action

The EPA is proposing approval of the North Dakota 111(d)/129 state plan for existing CISWI units because the plan requirements are at least as stringent as the requirements for existing CISWI units found in 40 CFR part 60, subpart DDDD. The state plan was submitted pursuant to 40 CFR part 60, subparts DDDD and B, and part 62, subpart A. Accordingly, the EPA proposes to amend 40 CFR part 62, subpart JJ to reflect the acceptability of the state plan submittal. This proposed approval is limited to the provisions of 40 CFR parts 60 and 62 for existing CISWI units, as found in the emission guidelines of Part 60, subpart DDDD. The EPA Administrator will retain the authorities listed under §§60.2542 and 60.2030(c).

V. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations at 40 CFR 62.04. Thus, in reviewing section 111(d)/129 plan submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this proposed rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Commercial and industrial solid waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 22, 2018.

Douglas H. Benevento,
Regional Administrator,
Region 8.